

CHAPTER 351

HABITUAL TRAFFIC OFFENDERS

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Cross-reference: See also ch. Trans 103, Wis. adm. code.

351.01 Declaration of intent. The legislature intends by enacting this chapter:

(1) To provide maximum safety for all users of the highways of this state.

(2) To deny the privilege of operating motor vehicles to persons who by their conduct and record have demonstrated their indifference for the safety and welfare of others and their disrespect for the laws, courts and administrative agencies of this state.

(3) To discourage repetition of traffic violations by individuals against the peace and dignity of this state and its political subdivisions and to impose increased and added deprivation of the privilege to operate motor vehicles upon habitual traffic offenders who have been convicted repeatedly of traffic law violations.

History: 1979 c. 333.

Ch. 351 is constitutional. *State v. Strassburg*, 120 Wis. 2d 30, 352 N.W.2d 215 (Ct. App. 1984).

351.02 Definitions. In this chapter:

(1) “Habitual traffic offender” means any person, resident or nonresident, whose record, as maintained by the department shows that the person has accumulated the number of convictions for the separate and distinct offenses, regardless of the class or type of motor vehicle being operated, under par. (a) or (b) committed within a 5-year period as follows:

(a) Four or more convictions of the following separate and distinct offenses, including any combination thereof:

1. Homicide under s. 940.06, 940.09 or 940.10 involving the use of a vehicle.

2. Reckless driving under s. 346.62.

3. Driving or operating a motor vehicle in violation of s. 346.63 (1m), 1985 stats., or s. 346.63 (1) or (2).

5. Making any false statement to the department under s. 345.17.

6. Any crime punishable as a felony under chs. 341 to 348 or any felony in the commission of which a motor vehicle is used.

7. Failure of the operator of a motor vehicle involved in an accident to stop at or near the scene of the accident and report his or her identity under s. 346.67 (1).

8. Fleeing or attempting to elude an officer under s. 346.04 (3).

9. Refusal to submit to testing under s. 343.305 (9) (d).

10. Any offense committed by the person under the law of another jurisdiction prohibiting conduct described in sections 6–207, 6–302, 10–102, 10–103, 10–104, 11–901, 11–902, 11–907 or 11–908 of the uniform vehicle code and model traffic ordinance (1987), or prohibiting homicide or manslaughter resulting from the operation of a motor vehicle, use of a motor vehicle in the commission of a felony, reckless or careless driving or driving a motor vehicle with willful or wanton disregard for the safety of persons or property, driving or operating a motor vehicle while under the influence of alcohol, a controlled substance, a controlled substance analog or any other drug or a combination thereof as

prohibited, driving or operating a motor vehicle while having a detectable amount of a restricted controlled substance in the person’s blood, refusal to submit to chemical testing, perjury or the making false statements or affidavits to a governmental agency in connection with the ownership or operation of a motor vehicle, failing to stop and identify oneself as the driver or operator in the event of a motor vehicle accident with a person or an attended motor vehicle or fleeing from or attempting to elude a police, law enforcement or other peace officer, as those or substantially similar terms are used in that jurisdiction’s laws.

(b) Twelve or more convictions of violations of ch. 346, including violations under par. (a).

(c) The offenses under pars. (a) and (b) are deemed to include offenses under any valid ordinance enacted by a local authority under s. 349.06 or any law enacted by a federally recognized American Indian tribe or band in this state which are in strict conformity with the offenses under pars. (a) and (b), and any federal law which is in substantial conformity with the offenses under pars. (a) and (b).

(d) If more than one offense under par. (a) or (b) arises out of the same occurrence, all of those offenses shall be treated as one offense, on the first such occasion, if the person charged has no record of prior offenses within the preceding 5-year period.

(f) The department may, by rule, exempt specific violations of ch. 346 from being counted under par. (b) if the department determines that the violation is a petty offense, except that the department may not exempt any violation for which the department assigns demerit points under s. 343.32 (2) or rules promulgated thereunder.

(1m) “Repeat habitual traffic offender” means any person, resident or nonresident, whose record as maintained by the department shows that the person has been convicted of 2 offenses under sub. (1) (b) committed within one year following issuance of an occupational license to the person pursuant to s. 351.07 or whose record as maintained by the department shows that the person has been convicted of one offense under sub. (1) (a) or 4 offenses under sub. (1) (b) committed within 3 years following issuance of an occupational license to the person pursuant to s. 351.07, regardless of the license under which the person was operating a motor vehicle or the classification of the vehicle being operated.

History: 1979 c. 333; 1983 a. 189 s. 329 (34); 1983 a. 459, 525, 535; 1985 a. 71, 337; 1987 a. 3, 399; 1989 a. 56, 105; 1991 a. 39; 1995 a. 448; 1997 a. 84, 258; 1999 a. 9; 2003 a. 97; 2005 a. 25; 2007 a. 96.

Cross-reference: See also definitions in s. 340.01.

The 5-year requirement in sub. (1) applies to offenses, not resulting convictions. *De Bruin v. State*, 140 Wis. 2d 631, 412 N.W.2d 130 (Ct. App. 1987).

351.025 Revocation. (1) The secretary shall revoke a person’s operating privilege for a period of 5 years upon receipt of a record of conviction which brings the person within the definition of a habitual traffic offender or repeat habitual traffic offender.

(2) The revocation is effective on the date the department mails the notice of revocation.

History: 1985 a. 71; 1999 a. 9.

There is no discretion in the administration of this chapter. *State v. Strassburg*, 120 Wis. 2d 30, 352 N.W.2d 215 (Ct. App. 1984).

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A traffic violator has no due process right to be informed of the collateral consequences of being classified a habitual offender because of a plea to the underlying traffic offense. *State v. Madison*, 120 Wis. 2d 150, 353 N.W.2d 835 (Ct. App. 1984).

351.027 Hearing on revocations. (1) Whenever the secretary under authority of s. 351.025 revokes a person's operating privilege, the secretary shall immediately notify the person in writing of the revocation and of the person's right to a hearing on the revocation as provided in sub. (2). The department shall send the notice by 1st class mail to the address most recently provided to the department by the person.

(2) If the person denies that he or she is a habitual traffic offender or repeat habitual traffic offender, the person may file with the circuit court for the county in which the person resides or, in the case of a nonresident, with the circuit court for Dane County a petition for a hearing and determination by the court that the person is not a habitual traffic offender or repeat habitual traffic offender. The scope of the hearing shall be limited to whether or not the person is the same person named in the record and whether or not the person was convicted of each offense shown by the record. The clerk of the court in which the petition is filed shall forward a copy of the petition to the secretary.

History: 1985 a. 71.

351.03 Secretary to certify copy of conviction record. Upon receipt of the copy of the petition under s. 351.027, the secretary shall certify the record of conviction of any person whose record brings him or her within the definition of a habitual traffic offender or repeat habitual traffic offender to the court and to the district attorney of the county in which the person resides or to the attorney general if the person is not a resident of this state. The certified record shall be prima facie evidence that the person named therein was duly convicted by the court wherein the conviction or finding was made, of each offense shown by the record. If the person denies any of the facts as stated in the record, he or she shall have the burden of proving that the fact is false.

History: 1979 c. 333; 1983 a. 525; 1985 a. 71.

351.04 District attorney or attorney general to represent secretary. The district attorney for the county in which the person resides who receives the certified copy of record from the secretary under s. 351.03 shall represent the secretary at the hearing under s. 351.027. In the case of nonresidents, the attorney general shall represent the secretary at the hearing.

History: 1979 c. 333; 1985 a. 71.

351.05 Habitual traffic offender or repeat habitual traffic offender determination by the court. The court in which the petition under s. 351.027 is filed shall determine whether the person is a habitual traffic offender or repeat habitual traffic offender. If the person denies he or she was convicted or found in violation of any offense necessary for a holding that he or she is a habitual traffic offender or repeat habitual traffic offender, and if the court is not able to make the determination on the evidence before it, the court may certify the decision of the issue to the court in which the conviction or finding of violation was made. The court to which the certification was made shall conduct a hearing to determine the issue and send a certified copy of its final order determining the issue to the court in which the petition was filed.

History: 1979 c. 333; 1983 a. 525; 1985 a. 71.

351.06 Order of court. If the court finds that the person before it is not the same person named in the record or that he or she is not a habitual traffic offender or repeat habitual traffic offender, the court shall order the secretary to reinstate the person's Wisconsin operating privilege. If the court finds that the person is the same person named in the record and that he or she is a habitual traffic offender or repeat habitual traffic offender, the court shall deny the person's petition for a determination that the person is not a habitual traffic offender or repeat habitual traffic offender. The clerk of the court shall file a copy of the order or

denial of the petition with the department which shall become a part of the records of the department.

History: 1979 c. 333; 1983 a. 525; 1985 a. 71.

There is no discretion in the administration of this chapter. *State v. Strassburg*, 120 Wis. 2d 30, 352 N.W.2d 215 (Ct. App. 1984).

351.07 Occupational license; conviction after issuance. (1) A person whose operating privilege has been revoked under this chapter as a habitual traffic offender may, after 2 years of the period of revocation have elapsed, petition a judge of the circuit court for the county in which the person resides for an order authorizing the issuance of an occupational license allowing the operation of vehicles other than commercial motor vehicles. The person's petition shall include a compelling reason why the person should be granted an occupational license and additional reasons why the judge should believe that the person's previous conduct as a traffic offender will not be repeated. The judge shall state his or her reasons for granting or denying the petition on the record. If the judge grants the petition, the judge shall issue an order authorizing the issuance of an occupational license, limited to the operation of vehicles other than commercial motor vehicles, to the person under s. 343.10. The clerk of the court shall file a copy of the order with the department, which shall become a part of the records of the department. Upon receipt of the court order, the petitioner shall be considered an applicant by the department for purposes of s. 343.10.

(1g) No person may file a petition for an occupational license under sub. (1) unless he or she first pays a fee of \$40 to the clerk of the circuit court. The clerk of the circuit court shall give the person a receipt and forward the fee to the county treasurer. That treasurer shall pay 50% of the fee to the secretary of administration under s. 59.25 (3) (m) and retain the balance for the use of the county.

(2) Upon conviction of a person who is issued an occupational license as provided by sub. (1) of 2 offenses under s. 351.02 (1) (b) committed within one year following issuance of the occupational license or of one offense under s. 351.02 (1) (a) or 4 offenses under s. 351.02 (1) (b) committed within 3 years following issuance of the occupational license, the secretary shall proceed under s. 351.025.

History: 1983 a. 525; 1985 a. 71; 1987 a. 403; 1989 a. 105; 1995 a. 269; 1997 a. 35; 2001 a. 109; 2003 a. 33; 2009 a. 243.

Cross-reference: See also ch. Trans 117, Wis. adm. code.

351.08 Operation of motor vehicle by habitual traffic offender or repeat habitual traffic offender prohibited; penalty; enforcement. Any person who is convicted of operating a motor vehicle in this state while the revocation under this chapter is in effect shall, in addition to any penalty imposed under s. 343.44, be fined not to exceed \$5,000 and imprisoned not to exceed 180 days. No portion of the sentence may be suspended, except in a case where operating was made necessary by a situation of emergency, as determined by the court. Any person imprisoned under this section, on his or her request, may be allowed Huber law work privileges under s. 303.08 or may be allowed to work under s. 303.10 (3). For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle while his or her license, permit or privilege to drive is suspended or revoked or is charged with driving without a license, the court before hearing the charge shall determine whether the person is a habitual traffic offender or repeat habitual traffic offender and therefore barred from operating a motor vehicle on the highways of this state.

History: 1979 c. 333; 1983 a. 525, 535, 538; 1985 a. 71; 1989 a. 31; 1995 a. 281.

This section authorizes enhancements to penalties under s. 343.44. It does not create a separate substantive offense. 75 Atty. Gen. 106.

351.09 Recalculation of habitual traffic offender status. Any person whose operating privilege is revoked as a habitual traffic offender or as a repeat habitual traffic offender and whose classification as a habitual traffic offender or repeat habitual traffic offender resulted from one or more convictions for

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violations of s. 343.44 (1), or a local ordinance in conformity therewith, or the law of another jurisdiction that prohibits the operation of a motor vehicle with a suspended or revoked operator's license, may apply to the department for recalculation of that person's status as a habitual traffic offender or repeat habitual traffic offender. Upon receiving an application under this section, the department shall recalculate whether the person's record of convictions brings the person within the definition of a habitual traffic offender or repeat habitual traffic offender. If the recalculation demonstrates that the person is not a habitual traffic offender or repeat habitual traffic offender, the department shall rescind the order declaring the applicant a habitual traffic offender or repeat habitual traffic offender. Upon the completion of the recalculation under this section, the department shall provide written notice to the person of the result of the recalculation, of the order of rescission, if any, under this section and, if appropriate, of the process for reinstating the person's operating privilege. This section does not apply on or after January 1, 2003.

History: 1997 a. 84.

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When a recalculation under this section requires the rescission of the order finding a person to be a habitual traffic offender, the effect is an abrogation of that status from the outset of its existence. Rescinded habitual offender status can have no legal effect, must be treated as if it never existed, and cannot be the basis for imposing a criminal penalty. *State v. Hanson*, 2001 WI 70, 244 Wis. 2d 405, 628 N.W.2d 759, 99–3142.

351.10 Appeals. An appeal to the court of appeals may be taken from any final action or order of a court entered under this chapter in the same manner and form as an appeal in a criminal case.

History: 1979 c. 333; 1983 a. 535; Sup. Ct. Order, 146 Wis. 2d xiii, (1988).

351.11 Application of chapter. This chapter is in addition to and not in substitution for any provision of ch. 343 requiring the revocation of an operating privilege. An operating privilege may be revoked in accordance with ch. 343 notwithstanding the fact that the revocation is not mandated by this chapter. The penalty imposed under s. 351.08 is in addition to the penalty imposed under any other law or ordinance for an offense specified in s. 351.02.

History: 1979 c. 333; 1997 a. 84.